

## Message Text

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TO AMEMBASSY BONN PRIORITY

INFO USMISSION USBERLIN PRIORITY

USMISSION NATO

AMEMBASSY LONDON

AMEMBASSY MOSCOW

AMEMBASSY PARIS

AMEMBASSY BERLIN

C O N F I D E N T I A L STATE 009718

E.O. 11652: GDS

TAGS:PFOR, PGOV, WB, GW, UR, US, UK, FR

SUBJECT: FRG-SOVIET LEGAL ASSISTANCE (NON-) AGREEMENT

REFS: A.) BONN 00452 B.) STATE 4129 C.) BONN 20019 (1975)

D.) USBERLIN 2557 (1975)

1. DEPARTMENT REALIZES THAT THE LEGAL ASSISTANCE ISSUE IS  
EXTREMELY COMPLEX, WITH MANY CONCEIVABLE VARIATIONS AND PER-  
MUTATIONS. AFTER FULL CONSIDERATION OF THE EMBASSY'S DE-  
TAILED DISCUSSION REF A, DEPARTMENT INCLINES TOWARD THE  
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FRENCH AND EMBASSY VIEW THAT IT WOULD BE PREFERABLE TO TREAT

THE LEGAL ASSISTANCE ARRANGEMENT AS AN AGREEMENT, AT LEAST FOR BERLIN PURPOSES, PROVIDED THE MODALITIES INVOLVED CAN BE IMPROVED TO BRING THE ARRANGEMENT CREDIBLY UNDER THE UMBRELLA OF "ESTABLISHED PROCEDURES." AS PERSUASIVELY ARGUED BY EMBASSY BONN, THE GERMAN PUBLIC (AND MOSCOW) WOULD PRESUMABLY VIEW ANY ARRANGEMENT AS AN AGREEMENT AND IT WOULD ILL-SUIT THE FRG'S BROADER POLITICAL INTERESTS TO PORTRAY THE RESULTS OF ITS LENGTHY NEGOTIATIONS WITH THE SOVIETS AS A NON-AGREEMENT, NO MATTER HOW SANITIZED LEGALLY. THUS, PROVIDED THE BRITISH CAN BE BROUGHT AROUND, WE BELIEVE CONSIDERATION OF DETAILED NON-AGREEMENT OPTIONS SUCH AS THOSE SUGGESTED PARA 2, REF B, CAN BE HELD IN

ABEYANCE FOR USE IF A FALLBACK PROVES NECESSARY.

2. IN EVENT THOSE NON-AGREEMENT OPTIONS ARE TO BE DISCUSSED, HOWEVER, SUGGESTION REGARDING REORDERING SEQUENCE OF DECLARATIONS INVOLVED MODIFICATIONS AS WELL. ESSENTIAL ELEMENT IS THAT THERE WOULD BE NO DIFFERENCE IN TREATMENT BETWEEN BERLIN AND FRG LAENDER: SOVIETS WOULD MAKE TWO INITIAL UNILATERAL DECLARATIONS; FRG WOULD FOLLOW WITH ONE, APPLICABLE TO BOTH PRECEDING SOVIET DECLARATIONS. THUS, SOVIETS WOULD BE HARD PRESSED TO DESCRIBE ONE PART OF SCENARIO AS AGREEMENT WITH FRG AND ANOTHER AS NOT CONSTITUTING AGREEMENT WITH FRG. FACT THAT USSR AND FRG NOT JOINING TOGETHER IN ONE STATEMENT OR IDENTICAL SEPARATE STATEMENTS ON FRG LAENDER REDUCES APPEARANCE THAT AGREEMENT HAS BEEN ENTERED INTO. AS EMBASSY POINTS OUT, HOWEVER, THIS KIND OF SEQUENCE OF STATEMENTS COULD ALSO BE TREATED AS AN AGREEMENT AND, BY ADDITION OF SUBMISSION OF PACKAGE TO AK, THIS COULD BE MADE INTO SECOND OPTION FOR HANDLING OF PACKAGE UNDER "ESTABLISHED PROCEDURES". FIRST OPTION WOULD THEN BE THAT SET FORTH PARA 6 BERLIN 2557 (1975); SECOND OPTION WOULD BE THAT JUST SET OUT ABOVE; AND THIRD OPTION WOULD BE THAT SET OUT IN PARA 7(F) OF BONN 452.

3. WE ARE SOMEWHAT ENCOURAGED BY VAN WELL'S REPORTED STATEMENT TO THE SOVIETS THAT ANY NOTIFICATION TO THE ALLIES WOULD BE ENTIRELY UNACCEPTABLE, APPARENTLY A SHIFT  
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FROM THE EARLIER FRG POSITION EXPRESSED IN MOSCOW IN NOVEMBER THAT THIS WAS UP TO THE ALLIES (PARA 3, REF C). WE SHARE EMBASSY BONN'S AND USBERLIN'S (REF D) CONCERNS ON THIS POINT, AND US REP MAY JOIN FRENCH, BRITISH AND FRG CONSENSUS IN OPPOSING SOVIET NOTIFICATION TO THE THREE POWERS. HOWEVER, OPPOSITION SHOULD NOT BE COUCHED IN TERMS OF SUCH NOTIFICATION'S "UNACCEPTABILITY", BUT RATHER ITS "UNDESIRABILITY", SINCE WE DO CONCEIVE OF SEVERAL

SCENARIOS IN WHICH SUCH NOTIFICATION, FOLLOWED BY ALLIED  
COUNTER STATEMENT ON ITS IRRELEVANCE, WOULD BE TOLERABLE  
OUTCOME. KISSINGER

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